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ment. For the offence of throwing stones at prisoners there must be a sentence of three days medium arrest and for each case of insulting prisoners a sentence of a week's light arrest. In accordance with the terms of §54 of the Military Penal Code and of §74 of the Imperial Code a comprehensive sentence has to be passed to include these separate sentences. The period of detention during the enquiry will be counted as part of the term of imprisonment now ordered; this is in accordance with §60 of the Imperial Penal Code.

The decision of the Court as to the costs is based upon §§497 *et seq.* "St. P.O." (§Criminal Procedure Rules) in conjunction with §4 of the Law of 24th March, 1920 (Imperial Code I.S. 341).

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
SCHULTZ,
KLEINE,
HAGEMANN,
DR. VOGT.

The present copy agrees with the original document.

(Signed by)

The Clerk of the Court of the Second
Criminal Senate of the Imperial
Court of Justice.

(Seal of Court).

BORCHARD.

JUDGMENT IN THE CASE OF EMIL MÜLLER

Rendered May 30, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against Emil Müller, barrister, and Captain in the Reserve (retired), of Karlsruhe, born on 24 July, 1877, in Mannheim, for crimes and offences against sections 122, 143, 55, 59, 1, 121, 7, of the Military Penal Code and section 74 of the Imperial Penal Code,

the second Criminal Senate of the Imperial Court of Justice at a sitting held in public on 30 May, 1921, at which there took part as

Judges,

The President of the Senate, Dr. Schmidt, and the Imperial Justices, Dr. Sabarth, Dr. Paul, Backs, Dr. Schultz, Dr. Kleine, Hagemann,

as officials of the Public Prosecutor's Department,

The Oberreichsanwalt, Dr. Ebermayer and Lingemann, Counsel of the Public Prosecutor's Department,

as Clerk of the Court,

Risch, official,

after oral evidence.

The accused is sentenced to six months' imprisonment for having ill-treated subordinates in nine instances; for having tolerated such ill-treatment in one instance; for having dealt with subordinates in four instances contrary to the regulations; and for having insulted subordinates in two instances. On the remaining charges he is acquitted.

The costs of the proceedings in respect of the charges, for which sentence has been passed, are imposed upon the accused, and those in respect of the charges, on which the accused has been acquitted, are imposed upon the Imperial Exchequer.

The Imperial Exchequer is also to bear the whole of the expenses connected with the first-mentioned cases, including the necessary expenses of the accused.

By Right

REASONS OF THE DECISION

In March, 1918, the accused, who was then a captain in the Reserve, commanded the II Company of the Gelsenkirchen Landsturm Battalion. In this capacity he was, in the beginning of April, placed in command of a camp for English prisoners of war at Flavy-le-Martel, which was being put in order by the battalion. He shared these duties with the commander of No. I Company, but each company took over a separate portion of the camp, and took up its quarters with the prisoners of war assigned to it. No commandant of the camp as a whole was appointed. The duties of the company commanders consisted solely in housing, feeding and supervising their prisoners, and in arranging, day by day, to provide the troops requisitioned for outside work. They had nothing to do with the regulation of this work itself or settling the hours of labor. This was the business of the commander of the battalion and of his subordinates. The company commanders took over a camp which was found empty. In the camp there were barracks and other buildings. These were the only buildings in the neighborhood. The company commanders had no choice of other buildings.

The accused held this position from the beginning of April until 5th May, 1918, that is to say, for a period of about five weeks. On the 4th May he was given leave, as he needed treatment for neurosis of the heart. He left the camp on 5th May and never returned.

The camp had shortly before been taken from the English during the so-called March offensive, and had previously been used by them as a camp for the temporary reception of German prisoners of war. It was in a wretched condition. It lay in a marshy and completely devastated district immediately behind the fighting line, where everything was still in constant movement. During the time the English had been in possession of it, it was unfit for human occupation. The witness Roeder, who at that time and indeed at the end of January and beginning of February, 1918, had taken part in the

war on the English side, and had often come there as interpreter, gave reliable evidence that the accommodation had been defective in the extreme. In the two residential barracks, which together afforded room for some 300 prisoners only, double that number had been quartered. These barracks had a muddy, unboarded floor. There were no beds, but only some rotten wood-wool, which was infected with vermin. Windows and roofing were leaky. There were but two small so-called trench stoves so that the German prisoners had suffered from the cold in winter. The latrines were as primitive and unwholesome as can be imagined. There was a complete absence of sanitary arrangements, and also almost a complete absence of facilities for cooking and washing as well as of rugs. As a consequence of all this, numerous prisoners had become sick with influenza and intestinal troubles, especially with dysentery. Many had died. All had complained of the plague of lice. Even the English guard had suffered heavily. An English doctor had endeavored in vain to remove these defects.

The accused found the camp in precisely this condition, and had to do his best with it. The position was rendered more difficult for him because he was obliged to quarter over 1,000 men in the barracks as fresh prisoners were constantly arriving. Further, all the wells round about were ruined. The food allotted was insufficient, and during the first days he had no medical assistance. Finally he was obliged to detail daily very many men for heavy outside work, and the prisoners were already in a quite exhausted condition when they came under him. They were inadequately equipped with uniforms on arrival, as also with underclothes, rugs and so on. The accused at once set energetically to work to effect an improvement. On the one hand he sent many memoranda to his superiors emphatically demanding delivery of supplies in order to draw their attention to the conditions, and he made pressing demands for what was wanting (his report of 20th April, 1918, particularly is worthy of notice), and by urgent representations, both verbal and in writing, he in fact obtained many things. For example, medical assistance was allotted to him as early as the third day. Furthermore, he himself took in hand the improvement of the camp as far as was possible. He formed a working party from what labor was left in the camp. He had wells sunk, stoves installed, proper latrines laid out, cooking and washing places provided, and he fought the plague of lice first by the means of powder and finally by getting a disinfecting station set up. He also succeeded in getting some improvement in the food, and occasionally he got the outside work made easier. On one occasion he procured soap as well as extra food and luxuries from Belgium. On another he managed to get hold of some clothing which was not intended for his men at all. Several times he procured some horse-flesh, and he detailed those prisoners, who were particularly weak, for duty in the kitchens and bakeries where they could get more food. He showed thereby that he had sympathy with his prisoners and that he was not insensible to their real needs.

In spite of all this the position of the prisoners became continuously worse. Food remained insufficient. (The causes of this lay in the shortage of nourishing food prevailing at that time owing to the blockade.) The strength of the prisoners had not grown equal to the strenuous outside work. This work was necessitated by the fighting and, in determining it, the accused had in general no influence. Most of the prisoners grew weaker and weaker and they often collapsed at their work or on the march to their place of work as well as at the roll-calls in camp. Furthermore, infectious diseases broke out in the shelters, which were already overrun with lice and infected with germs of disease. The prisoners did not keep themselves clean and were unable to change either uniform or underclothing. At first there was not any sufficient quantity of disinfectant. Thus nearly all the prisoners suffered to a great extent from lice and ulcers, many also from intestinal catarrh. Finally dysentery, which already in the time of the English had been rampant there, broke out again, at first in isolated cases and then it spread rapidly. This epidemic developed after the departure of the accused in such a manner that a large proportion of the prisoners had to be transferred into the interior to Stendal, where many more died from it. In the camp itself the number of deaths from dysentery is said to have been considerable, but not until after the departure of the accused.

But no responsibility of any kind rests upon the accused for this wretched aggravation of the conditions. As has been stated above, he had perceived the danger in good time and had done everything to prevent it. That in this respect he attained but little was due to the circumstances which were beyond both him and also his immediate superiors. It was not possible at that time to take adequate care of the troops' and prisoners' camps close behind the battle zone. Nevertheless, in a short time the accused did an astonishing amount towards improving his camp and he laid the foundations, whereby in the course of the succeeding months (when a quieter period came along) this camp could be converted into a relatively well-equipped prisoners' camp. Later, not only his superiors but also the medical inspectors repeatedly acknowledged this to be so. He has the reputation of having been an able, energetic and conscientious officer, who always carried through the tasks which were imposed upon him and who always maintained good order. His immediate superior, the commander of the battalion, Major v. Bomsdorf, confirms this in particular. It cannot be disputed that as camp commandant he displayed these characteristics and that in this capacity he showed meritorious industry. In particular he cannot be reproached with not having endeavored in good time to get the camp free from epidemics. Any such an attempt at that time would have been hopeless. The cases of sickness from dysentery were then still sporadic; there was no question of a real epidemic. It has been conclusively proved that during the whole period of his command at the camp there was only one case of death among the prisoners under him and that this took place shortly before

his departure and was not attributable to dysentery. The neighboring company in the camp was in a similar condition. It is true that intestinal catarrh was already very prevalent as well as lice, ulcers and a general loss of vigor. These troubles were, however, universal in the camps of that district, and it was on this account that steps could not reasonably be taken for providing fresh quarters, a step which at that time would have been scarcely possible on any large scale.

So far, therefore, as the general conditions in the prisoners' camp at Flavy-le-Martel are concerned, the accused must not only be acquitted of any blame, but it should be placed on record that the zeal with which he carried out his duties deserves high praise. On the other hand, the same cannot be said about the way in which he treated the prisoners individually or his methods of maintaining order. It was precisely owing to his zeal and his natural tendency for an impetuous and rigorous action (combined with a serious condition of nervous overstrain) that prompted him to commit a series of excesses, which constituted a breach not only of his official duties but also of the criminal law. These excesses cannot be justified by the circumstances. His attitude towards the prisoners was hard and over-severe, sometimes even brutal, and in other cases it was at least contrary to regulations. He treated them not as subordinates, and it was as such that he ought to have regarded his prisoners, but he treated them more like convicts or inmates of penitentiaries. His methods were those of the convict prison or such like institutions, although even on this standard his conduct could not be tolerated. The court has heard of his ill-treating prisoners by hitting and kicking them. He allowed his staff to treat them in the same manner. Insults were hurled at the prisoners and there was other ill-treatment which was contrary to the regulations. He habitually struck them when he was on horseback, using a riding cane or a walking stick; several prisoners have stated that they were struck with a riding whip, but this must be a mistake as the accused did not possess one.

In detail the following instances are held proved:

I. Ill-treatment

1. According to the evidence of the witness Lovegrove the accused when on horseback struck the prisoner Millsom across the shoulders with his riding cane. Roll-call was being taken and Millsom marched past slackly and had a pipe in his mouth. Millsom himself is no longer alive.

2 and 3. In at least two cases the accused ordered prisoners to be bound to posts. In the first case, which he himself admits, this was done to a man whom he suspected of having been ringleader in an intended mutiny. The accused asserts that he made this man stand for about 10 minutes and ordered all the others to march past him; this being intended as a warning to the others. It has not been possible to establish the details of this incident. The fact remains, however, that, as the witness Thornton has said, there

never was any question of a mutiny, but only an arrangement to make a joint complaint, in the first place to the accused himself, and if opportunity arose to his superiors. The accused had found this out by questioning the prisoners concerned through an interpreter. The court cannot accept that he seriously believed from what he heard that a mutiny was intended.

The accused admits that there may have been a second case of tying a prisoner to a post, but he will not call it to mind more precisely. It remains doubtful whether this second occasion related to a man who had stolen some oats (witness Ray) or to one of the prisoners who evaded work (witness non-commissioned officers, Biela, Rose, Ellis, Nelms and Sharp). It is possible that there were several such incidents as the several descriptions vary a good deal from each other. But only one case can, however, be held to be proved. Biela has given evidence that in this case, the accused ordered the prisoners to be tied up for three days, two hours each day, and that the accused himself showed Biela how it was to be done. Biela then modified the severity of the punishment, entirely on his own accord, and omitted the third day's tying up altogether.

It has not been established that in these cases the accused either ordered or allowed that these prisoners should be so tied up that they were compelled to gaze continuously in the sun. If anything of the kind actually took place, it may have been because the non-commissioned officers or soldiers who carried out the order acted on their own responsibility; there is no proof that the accused had any knowledge of it. However, even without this inhuman method of carrying out the order, the tying up remains a very severe measure which cannot be justified in any way. This form of service punishment was done away with by an Imperial decree of 26th May, 1917, and certain remarks of the accused seem to show that this decree, which had been duly published and was much discussed, was not unknown to him. He probably ordered this tying up, not so much as a punishment but rather as a means of securing order generally and of putting a stop to insubordination. Of this, however, so far as the court can see, there was no reasonable fear, and the employment of this severe measure cannot be considered otherwise than as a case of ill-treatment under the conditions then obtaining.

4. On one occasion the accused struck, apparently only with his hand, the interpreter Sacof, because this man reported to him a complaint of another man who was asking for more bread.

5. The accused while on horseback struck a prisoner who was suffering from a bad foot. At roll-call this prisoner had raised his leg to show it to the accused, but the accused hit him across his leg with his riding cane. The man cried out, fell down and had to be carried into barracks (witness Stiles).

The witness Drewcock gave evidence as to further cases of ill-treatment. They happened in a tent-camp which was put up about the middle of April at the railway station and was intended for use by prisoners who were on

their way elsewhere. The accused was not appointed commandant of this tent-camp, but the supervision of the prisoners' maintenance there had been transferred to him. He undoubtedly had duties there and during this time he had authority over the prisoners in the camp. In carrying out these duties:

6. He thrashed the prisoner Batey with his walking-stick. This man became ill while at work outside the camp and, although violently attacked by the sentries who did not believe in his inability to work, he refused to work any further. The sentries reported him to the accused on their return and Batey repeated that he was ill and emphatically asked for a doctor. The accused got furious over this, as he thought that Batey was a malingerer; he then belabored him in the manner already stated.

7 and 8. In two cases at least the accused struck with his stick prisoners who were asking for improved conditions, particularly for more food. The accused excuses himself for doing this by stating that the prisoners in the tent-camp had frequently obtained double rations surreptitiously. This, however, cannot justify his violence against prisoners making requests to him.

9. The accused once struck Drewcock at roll-call when he (the accused) was riding in amongst the prisoners, who did not at once give way to him. He struck him across his wounded knee with his riding cane so hard that an abscess developed and later had to be cut. The accused could not have foreseen this, for the wounds on Drewcock's knee were not visible to him. But the blow must have been a heavy one.

In general the accused has admitted that it was his practice to enforce discipline, in cases of irregular behavior by means of light blows. He will not as a rule tax his memory about the details. He explains, however, it would have been impossible to attain rigid discipline if he had tolerated any lengthy explanations, especially as he and the prisoners could not understand each other's language. There may be some truth in this and there were no doubt serious difficulties in commanding such a camp. But nevertheless the accused never had any right to get over these difficulties by means of endless acts of violence.

Three further similar cases (namely those under 1, 2 and 5 of the indictment) come under the heading of treating prisoners contrary to the regulations; see under IV, 1 to 3 later. The charge under 1, 4, of the indictment is not proved. The accused is alleged to have struck the witness Lawrence in his face with the handle of a riding whip. Lawrence alone gives evidence of this, but Lawrence has not impressed the court as a credible witness. He has shown strong animosity, he has exaggerated everything far beyond the accounts of the other witnesses and he has told of monstrous happenings. For example he asserts that he saw the accused dismount at the burial of a prisoner, get down into the open grave and snatch away from the dead man the rug in which he was shrouded. This is demonstrably untrue. While the accused was at the camp one burial only took place in the camp and this by

orders of the accused was conducted in an absolutely proper manner. The corpse was placed in a coffin and the accused had ordered a wreath to decorate it.

II. *Toleration of ill-treatment by Subordinates*

Here only one instance has been proved with certainty. A prisoner moved in the ranks while at evening roll-call. He was harshly rebuked by Sergeant-Major Schubert. The accused saw the incident and called out something to Schubert who thereupon knocked the prisoner down with his fist. The prisoner was then carried away (witness Stiles). It is to be assumed that the accused at least tolerated and approved of this brutal treatment, even if it was not done on his orders.

On the other hand his guilt is not proved in connection with a second instance. A sentry guard was driving the prisoners out of the barracks to roll-call one morning and hit the witness Lovegrove on the hip with the butt-end of his rifle, perhaps because he did not come out sufficiently quickly. Lovegrove certainly thinks that he saw the accused, who was standing close by, laugh at this. But he can easily have been mistaken, and in any case it is not clear whether this ill-treatment had not taken place before the accused either noticed it or could prevent it. Therefore no case of knowingly permitting this when he could have prevented it (section 143 Military Penal Code) can be established here.

III. *Insults*

The witnesses Peace and Sacof declare that the accused generally abused and threatened the prisoners a good deal and that he frequently spoke of them as "Englishmen" and "Schweinhunde" (pig-dogs). This however is too vague to be regarded as proof of any actual insulting of particular individuals. But the witness Thornton reports two instances which are different. The accused said of a sick prisoner who was found to be in a dirty condition: "Away with the English 'Dreckschwein' (mire-pig)" (or words to that effect). These were serious personal insults and were wounding to national feeling and they are all the more serious because both the prisoners concerned were entirely blameless. For in the first instance the man had intestinal trouble and had been refused permission to leave the ranks at roll-call to go to the latrines and it was in consequence of this that he was in a filthy condition. The second instance concerned a prisoner who was seriously ill, half eaten by lice, and was to be washed by doctor's orders. He died the very next morning. There was no reason to insult men in so unhappy a condition, least of all for such insults to come from an officer and a man of education.

IV. *Treatment of Subordinates contrary to Regulations*

1. According to the statement of the witness Lovegrove the accused once saw two recumbent sick men lying down; they were so weak that they could not stand up before him and were groaning pitifully. But the accused is

said to have got angry and impatient and to have kicked them. This is not construed as a case of ill-treatment, although it is thus alleged in the indictment. There is a possibility that the accused did not wish to hurt the men, whose sickness he apparently did not yet believe to be real, but that he only wished to secure that his order to get up was immediately obeyed. It is not clear that the kicking was particularly violent or painful. Clearly, however, in each instance this constituted a treatment of the sick contrary to regulations. These assaults are considered therefore to amount to one offence against Section 121 of the Military Penal Code.

2. While Lovegrove himself was once marching past the accused, he did not turn his head sufficiently, so the accused pulled him out of the ranks by the ear and Lovegrove was then, according to his story, pushed to and fro. This also, despite the indictment, was only a case of treatment contrary to regulations, namely, merely an irregular attempt to put a prisoner right without any intention to ill-treat him.

3. The same holds good about the accused riding on horseback into the prisoners. (I, 5, of the indictment.) The accused admits that he liked, as soon as he appeared at roll-call, to ride quickly up to the ranks. He thought this was a suitable way of ensuring proper respect for himself and of making the prisoners attentive. According to the evidence of almost all the English and also of some German witnesses, he frequently rode so far into the ranks, that the ranks were broken. The prisoners scattered on all sides and many, who could not get out of the way quickly enough, were thrown down by the horse. Such excesses when riding up to a body of men is altogether contrary to regulations and is to be condemned. This is also the opinion of the military expert, General v. Fransecki. In the present case this has not been construed as ill-treatment, solely because no actual riding down or breaking up the ranks was intended and because as a matter of fact nobody was injured. The accused was prompted purely by excessive keenness. The several instances constitute one continuous action.

4. Finally, the accused, likewise acting continuously, often forced work on sick prisoners. When he could not muster the full complement of workers demanded or when supplementary demands arrived, he forcibly sent everyone out, even those entered as sick or who were obviously incapable of work; he tolerated no opposition. This is stated by numerous prisoners (Sacof, Goldberg, Tingle (medical orderly), Lovegrove, Peace, Abrahams, Nelms and Brett in complete agreement), and the German witness Benker confirms it. The accused cannot answer this by pleading that he considered many of these alleged sick to be malingerers or that his strict orders obliged him to send out the numbers of workers that were demanded. For the first excuse contradicts the evidence of the witnesses, who declare that there could have been no doubt about the sickness of many of the men in question. With regard to the second excuse the military advisers v. Kuhl and v. Fransecki declare that there was certainly a great and urgent need of

workers and that the necessity for a scrupulous supplying of the demands for them had been enjoined upon the commandants of the camp. But they had been expressly told to avoid including weak or sick prisoners, because the maintenance of the prisoners in a healthy condition was just as much to the interest of the administration of the army as it was in that of humanity. These considerations the accused in his excessive zeal constantly ignored and that is an offence which it is not easy to estimate, especially when the wretched health conditions in this camp are considered.

The case mentioned in IV, 1, 6, of the indictment must be excluded here. The witness Ray was made to chop wood for an hour, because, owing, it is said, to weakness, he did not salute. It was not certain that Ray was really too weak for this kind of penal work or that he was ordered to do it by the accused. Ray, who had received the order from Sergeant-Major Schubert, only supposes this, but the sergeant-major may have been acting independently.

Further, it is also not proved that the accused refused medical assistance to sick prisoners (IV, 3, of the indictment). His plea that he sent the men, who reported sick, to the medical authorities has remained unanswered.

The charges made in IV, 2, 4, and 5 have been satisfactorily explained. If prisoners washed their faces in dirty water, this was not because the accused directed them to do so, but because they did not trouble to change the water in the trough at the proper time and it was at all times possible to change this water. As regards the dying man who was covered with vermin, water was poured over him and he died the following day; but this treatment was given under medical orders and in a considerate way, though it is true that he was insulted by the accused while being washed. (*See above under III.*) The treatment itself did him no harm (witness Terlinson). The accused took some small photographs of the camp, especially of the latrine when the prisoners were using it, to commemorate his service as commandant. He did this with a feeling of pride in the improvements effected by him. He might well have done this in a less objectionable manner. But in taking the photographs he had no intention of insulting the prisoners. If several prisoners thought that in doing this the accused was mocking them, this was due to their preconceived idea that the accused was animated by feelings of spiteful malignity towards them. This preconceived idea about the accused has shown itself on other occasions (looking into the mortuary; behavior when complaints were being made, &c.). But the court has found no definite facts to prove any such feelings on the part of the accused. Accordingly on all these points (as well as those under 1, 4, and II, 1, of the indictment) the accused is acquitted. The charge in IV, 6 (the tying up of the man who stole oats) has been decided as a case of ill-usage (*see above I, 2/3*).

So far as the accused is guilty his offences have throughout been com-

mitted in his capacity of superior towards his subordinates and while he was carrying out his duties. He served continuously in the camp.

Thus it has been definitely established:

That the accused was at the prisoners' camp at Flavy-le-Martel from the beginning of April until 5th May, 1918, and that the following separate incidents took place:—

I. In nine instances he deliberately kicked or struck English prisoners of war, his subordinates, or otherwise physically ill-treated them or caused injury to their health.

II. In one instance, as commanding officer of a military detachment, he allowed one of his subordinates, a non-commissioned officer, deliberately to strike an English prisoner of war with his fist. The accused thereby with knowledge permitted the committing of a criminal act, which he could have prevented, and which he was officially bound to prevent.

III. In two instances he insulted English prisoners of war, his subordinates, by using words of abuse.

IV. In four instances he is guilty of treating English prisoners of war, his subordinates, contrary to the regulations and as in the cases I to IV, he did this whilst carrying out his duties.

He is thus liable to punishment for crimes and offences according to Section 122, paras. 1, 143, 121; paras. 1, 55⁽²⁾, 53, 7, of the Military Penal Code; Section 74 of the Imperial Penal Code (*cf.* the Imperial Law of 18th December 1919 and 24th March 1920, which deals with the prosecution of war crimes and offences).

In deciding the extent of his punishment the following factors have had to be taken into consideration:

The accused is in no wise guilty to the extent which might appear from the results of the preliminary proceedings. The trial before this court has vindicated him on many points; in others it has proved that his offences were not so serious as had been expected. As has already been stated, he has been an able officer, who faithfully tried to do his duty; who always strove to win the appreciation of his superiors, and who had hitherto secured such appreciation in full measure throughout his long years of war service. Then, however, he was suddenly confronted with an unusually difficult situation. He was obliged to take over the, to him, novel position of commandant of prisoners of war, and this in one of the most disturbed battle areas, close up against the front, in a devastated and unhealthy neighborhood and at a time of most severe scarcity of all necessities of life. The accused had, so to speak, to create out of nothing, a camp to house the unending stream of prisoners. All these burdens were placed upon him at a time when he was already almost breaking down as a result of war strain and an old heart complaint, and was afflicted with serious nerve trouble (witness Kessler, doctor of medicine). In spite of all this, he showed himself, generally speaking, equal to his task and carried out the administration of the camp as such as well as possible.

But in his personal treatment of the prisoners (and for this his temperament was less suited), he erred seriously. Instead of earning the prisoners' confidence, he got a reputation among them for being a tyrant and a nigger-driver. But here, too, his excesses were only due to that military enthusiasm which worked him up to an exaggerated conception of military necessity and discipline. He made insufficient allowance for the special conditions in which prisoners in war-time find themselves. He showed himself severe and lacking in consideration but not deliberately cruel. His acts originated, not in any pleasure in persecution, or even in any want of feeling for the sufferings of the prisoners; but in a conscious disregard of the general laws of humanity. Had this not been so, he would not have generally troubled so much about the well-being of the prisoners, and his acts of illtreatment would have caused more serious injury to those concerned than has been proved to have occurred. Not a single case has had really serious consequences.

It must be emphasized that the accused has not acted dishonorably, that is to say, his honor both as a citizen and as an officer remains untarnished. None the less the choice given by law (Sections 121, 122, 55 of the Military Penal Code) between imprisonment and detention in a fortress, cannot be decided in favor of the latter. There has been an accumulation of offences, which show an almost habitually harsh and contemptuous and even a frankly brutal treatment of prisoners entrusted to his care. His conduct has some times been unworthy of a human being: these factors the court considers decisive. When he mixed with the prisoners there was seldom anything but angry words, attempts to ride them down, blows and efforts to push them out of his way: he never listened patiently to their grievances and complaints: he had no eyes for their obvious sufferings: he cared little for the individual, if only he could secure order among the prisoners collectively. It is impossible to consider his conduct as a number of separate instances of rash actions which he regretted: it appears rather as a deliberate practice of domineering disregard for other men's feelings. It is no justification that his methods were intended to secure discipline. It is also no excuse that the conditions had been brutalized by war. The only possible excuse for him was that he was over-excited: that he feared disorder, and that he did not know how to handle men. But even so, it must be recalled that he had under him prisoners who were peculiarly unfortunate, sick and suffering men who deserved protection. When these prisoners offended against the regulations, the cause for the most part lay in their miserable condition. Such men in such conditions were not likely to be really refractory. The accused should have avoided being unduly severe; and above all he ought not to have indulged in such reprehensible means of punishment as blows, kicks, tying-up and such like. Such conduct dishonors our army, and is singularly unfitting in a man of his education and military as well as civilian position.

Therefore it seems to the court that detention in a fortress is too light a sentence to follow such an accumulation of offences.

The most grievous mistake of the accused, having regard to the lamentable health conditions in the camp, is considered to be his compelling of sick men to work (under IV, 4). For this there must be a sentence of 2 months' imprisonment. For the other offences there will be:

Under I, 2 and 3, 5, 6,
Under II, 1 and under IV, 3 } each 45 days' imprisonment.

Under I, 1, 4, 7 and 8 each one weeks' arrest: Under I, 9, two weeks' arrest, these cases being considered as less grievous:

Under III, 1 and 2, and under IV, 2, each one week's arrest: and
Under IV, 1, two weeks' arrest.

Out of these separate sentences there will be a total sentence of 6 months' imprisonment in accordance with Section 74 of the Penal Code and Section 54 of the Military Penal Code. In respect of the other charges the accused is acquitted.

The costs are regulated in accordance with Sections 497, 498, para. 1, in conjunction with Section 4 of the Imperial Law for the Prosecution of War Crimes and Offences of 24th March 1920.

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
BACKS,
SCHULTZ,
KLEINE,
HAGEMANN.

The present copy agrees with the original document.

The Clerk of the Court of the 2nd
Criminal Senate of the Imperial
Court of Justice.

(Seal of the Court.)

BORCHARD.

JUDGMENT IN THE CASE OF ROBERT NEUMANN

Rendered June 2, 1921

IN THE NAME OF THE EMPIRE

In the criminal charge against Robert Neumann, workman, of Güstow, Ramdow District, at present under detention pending inquiry, born 11th February 1891 in Dombrowken, Culm District, charged with crimes against §§1, 53, 54, 55, 122, 121, of the Military Penal Code and §74 of the Imperial Penal Code.

The Second Criminal Senate of the Imperial Court of Justice, at a Sitting held in public on 2nd June 1921 at which there took part as Judges—